

OLL 84-3148
3 July 1984

MEMORANDUM FOR: Director of Security

Attn:

Chairman, SECOM

General Counsel

Attn:

FROM:

Chief, Legislation Division
Office of Legislative Liaison

SUBJECT: H.R. 4681, the Federal Polygraph Limitation
and Anti-Censorship Act of 1984

1. The House Committee on Post Office and Civil Service on 27 June 1984 marked up and reported out H.R. 4681, the Federal Polygraph Limitation and Anti-Censorship Act of 1984. During the mark-up, the Committee substituted Representative Schroeder's amendment (H.R. 5866) for the original Brooks bill and reported this bill out of Committee without any further revisions or changes.

2. A copy of the Schroeder amendment is attached hereto. This bill essentially provides that, with the exception of CIA and NSA, federal agencies may not require employees to take polygraph examinations except on a voluntary basis as part of a specific investigation into alleged criminal conduct. Similarly, with the exception of CIA and NSA, agencies may not require employees to enter into prepublication review agreements, and are required to rescind any such agreements entered into prior to the effective date of this legislation.

3. Our own House Permanent Select Committee on Intelligence (HPSCI) and the House Armed Services Committee (HASC) have both requested sequential referral of the attached bill. With respect to HPSCI, after the Post Office and Civil Service Committee prepares and issues its report on the attached bill, HPSCI will have 20 legislative days in which to consider the attached bill. As to this required report on H.R. 4681, the House Post Office and Civil Service Committee has not yet commenced writing the report. We understand that the Committee intends to closely consult with the staffs of HPSCI and the HASC in preparing the report. A completed report is not expected, at the earliest, until sometime after the July

recess. Given the length of time that the preparation of this report and the subsequent referral of the bill to HPSCI and HASC will entail, the bill may never reach the floor for consideration by the entire House.

4. We will be working closely with HPSCI in their negotiations with the House Post Office and Civil Service Committee concerning this proposed report and will keep you apprised of any developments on this matter.

STAT



Attachment

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SWH: csh (3 July 1984)

98TH CONGRESS
2D SESSION

H. R. 5866

Relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1984

Mrs. SCHROEDER introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

Relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Polygraph Limi-
4 tation and Anti-Censorship Act of 1984".

5 SEC. 2. (a) Chapter 73 of title 5, United States Code, is
6 amended by adding at the end thereof the following new
7 subchapter:

1 "SUBCHAPTER VI—POLYGRAPH EXAMINATION
2 AND PREPUBLICATION REVIEW RESTRIC-
3 TIONS

4 "§ 7361. Definitions

5 "For purposes of this subchapter—

6 "(1) the term 'agency' means—

7 "(A) an Executive agency;

8 "(B) the United States Postal Service;

9 "(C) the Postal Rate Commission;

10 "(D) the Administrative Office of the United
11 States Courts;

12 "(E) the Library of Congress;

13 "(F) the Government Printing Office;

14 "(G) the Office of Technology Assessment;

15 "(H) the Congressional Budget Office;

16 "(I) the Office of the Architect of the Cap-
17 itol; and

18 "(J) the Botanic Garden;

19 "(2) the term 'employee' means—

20 "(A) an individual employed by an agency;

21 "(B) a Congressional employee (other than
22 an individual under subparagraph (A)); and

23 "(C) an expert or consultant who is under
24 contract under section 3109 of this title with an
25 agency, including, in the case of an organization

1 performing services under such section, an
2 individual involved in the performance of such
3 services;

4 “(3) the term ‘classified information’ means
5 information—

6 “(A) specifically authorized under criteria es-
7 tablished by statute or Executive order to be kept
8 secret in the interest of national defense or foreign
9 policy; and

10 “(B) in fact properly classified pursuant to
11 such statute or Executive order;

12 “(4) the term ‘polygraph examination’ means an
13 interview with an individual which involves the use of
14 a device designed to permit the examiner to make an
15 inference or a determination, by evaluation of meas-
16 ured physiological responses, concerning whether the
17 individual has truthfully or deceptively responded to
18 inquiries made in such interview;

19 “(5) the term ‘action’, as used with respect to an
20 employee or applicant for employment, means—

21 “(A) a personnel action under clauses (i)
22 through (x) of section 2302(a)(2)(A) of this title;

23 “(B) a decision concerning clearance for
24 access to classified information; and

1 “(C) a performance evaluation (other than
2 under chapter 43 of this title);
3 in the case of such employee or applicant; and

4 “(6) the term ‘prepublication review’ means sub-
5 mission of information to an agency for the purpose of
6 permitting such agency to examine, alter, excise, or
7 otherwise edit or censor such information before it is
8 publicly disclosed, but does not include any such sub-
9 mission with respect to information which is to be dis-
10 closed by an employee in such employee’s official
11 capacity.

12 **“§ 7362. Restrictions relating to polygraph examinations**

13 “(a) An agency may not—

14 “(1) require, threaten to require, or, except as
15 provided in subsection (b), request any employee or
16 applicant for employment to submit to a polygraph
17 examination;

18 “(2) take, or threaten to take, any action against
19 an employee or applicant for employment—

20 “(A) on the basis of that individual’s refusal
21 to submit to a polygraph examination; or

22 “(B) on the basis of any inference or deter-
23 mination (referred to in section 7361(4) of this
24 title) made from that individual’s performance in
25 the course of a polygraph examination; or

1 “(3) fail to take, or threaten to fail to take, any
2 action on behalf of an employee or applicant for
3 employment—

4 “(A) on the basis of that individual’s refusal
5 to submit to a polygraph examination; or

6 “(B) on the basis of any inference or deter-
7 mination described in paragraph (2)(B).

8 “(b)(1) An agency may request an employee, in writing,
9 to submit voluntarily to a polygraph examination—

10 “(A) if the examination is administered as part of
11 a specific investigation into alleged criminal conduct—

12 “(i) after the completion, by other means, of
13 as thorough an investigation as circumstances
14 reasonably permit; and

15 “(ii) solely for the development of informa-
16 tion essential to that investigation;

17 “(B) if the individual is reasonably believed to
18 have knowledge of the matter under investigation; and

19 “(C) if the alleged criminal conduct constitutes an
20 offense punishable by death or imprisonment for a term
21 exceeding one year.

22 “(2) A polygraph examination under this subsection may
23 be administered only by an individual employed by, and
24 under the direction of—

25 “(A) the Central Intelligence Agency;

- 1 “(B) the National Security Agency;
- 2 “(C) the Federal Bureau of Investigation;
- 3 “(D) the United States Secret Service;
- 4 “(E) the Drug Enforcement Administration;
- 5 “(F) the Bureau of Alcohol, Tobacco, and Fire-
- 6 arms;
- 7 “(G) the Postal Inspection Service, United States
- 8 Postal Service;
- 9 “(H) the Intelligence and Security Command,
- 10 United States Army;
- 11 “(I) the Criminal Investigation Command, United
- 12 States Army;
- 13 “(J) the Naval Investigative Service, Department
- 14 of the Navy;
- 15 “(K) the Office of Special Investigations, Depart-
- 16 ment of the Air Force; or
- 17 “(L) the Marine Corps.
- 18 **“§ 7363. Restrictions relating to prepublication review**
- 19 “An agency may not—
- 20 “(1) request, require, or threaten to require, an
- 21 employee or applicant for employment to enter into an
- 22 agreement, any part of which requires prepublication
- 23 review;
- 24 “(2) take, or threaten to take, any action against
- 25 an employee or applicant for employment on the basis

1 of that individual's refusal to enter into such an
2 agreement;

3 "(3) take, or threaten to take, any action against
4 an employee or applicant for employment on the basis
5 of that individual's refusal to comply with any of the
6 provisions of such an agreement which require pre-
7 publication review;

8 "(4) fail to take, or threaten to fail to take, any
9 action on behalf of an employee or applicant for em-
10 ployment on the basis of a refusal referred to in
11 paragraph (2) or (3); or

12 "(5) establish or enforce, or threaten to establish
13 or enforce, any other requirement in order to compel
14 prepublication review.

15 **"§ 7364. Remedies**

16 "(a)(1) Subject to paragraph (2) and subsection (b), any
17 person aggrieved by a violation of section 7362 or 7363 of
18 this title may bring a civil action against the United States
19 for equitable or monetary relief, or both, in the district court
20 of the United States for the district in which that person
21 resides, for the District of Columbia, or, in the case of an
22 employee or former employee, for the district in which that
23 person was employed at the time the cause of action arose.

24 "(2) A civil action under this subsection shall be forever
25 barred unless commenced within two years after the cause of

1 action arose. For purposes of this paragraph, a cause of
2 action shall be deemed to have arisen on the date that the
3 person aggrieved knew, or with reasonable diligence should
4 have known, of the violation concerned.

5 “(3) The court shall award reasonable costs of litigation,
6 and may award reasonable attorney fees, to a prevailing
7 plaintiff in an action brought under this subsection.

8 “(b)(1) If a person aggrieved by a violation of section
9 7362 or 7363 of this title would also be entitled to initiate
10 proceedings for remedial action under agency administrative
11 procedures, such person may raise the matter under subsec-
12 tion (a) or under such administrative procedures, but not
13 both.

14 “(2) A person shall be deemed to have exercised the
15 option under this subsection to raise a matter either under
16 subsection (a) or under agency administrative procedures
17 upon the timely commencement of an action by such person
18 in accordance with the Federal Rules of Civil Procedure or
19 the timely initiation of such administrative procedures by
20 such person, as the case may be.

21 “(3) For purposes of this subsection, the term ‘agency
22 administrative procedures’ means any formal process of
23 review by an agency provided under statute, regulation, or
24 Executive order, including judicial review of any determina-
25 tion made in the course of such process.

1 **“§ 7365. Exemptions**

2 “Sections 7362 and 7363 of this title do not apply—

3 “(1) to the Central Intelligence Agency, in the
4 case of any individual employed by, or detailed to, the
5 Central Intelligence Agency, any individual applying
6 for a position in the Central Intelligence Agency, or
7 any expert or consultant under contract with the
8 Central Intelligence Agency; or

9 “(2) to the National Security Agency, in the case
10 of any individual employed by, or detailed to, the Na-
11 tional Security Agency, any individual applying for a
12 position in the National Security Agency, or any
13 expert or consultant under contract with the National
14 Security Agency.”.

15 (b) The analysis for chapter 73 of title 5, United States
16 Code, is amended by adding at the end thereof the following:

 “SUBCHAPTER VI—POLYGRAPH EXAMINATION AND
 PREPUBLICATION REVIEW RESTRICTIONS

 “7361. Definitions.

 “7362. Restrictions relating to polygraph examinations.

 “7363. Restrictions relating to prepublication review.

 “7364. Remedies.

 “7365. Exemptions.”.

17 SEC. 3. (a)(1) The provisions of any agreement referred
18 to in section 7363(1) of title 5, United States Code (as added
19 by this Act) are, to the extent that such provisions relate to
20 prepublication review, hereby rescinded.

21 (2) The head of each agency concerned shall provide
22 written notice to each individual who, immediately before this

1 Act takes effect, was a party to any such agreement, inform-
2 ing such individual of—

3 (A) the enactment of this section; and

4 (B) the provisions of the agreement rescinded as a
5 result of the enactment of this section.

6 (b) Nothing in subsection (a) applies with respect to the
7 Central Intelligence Agency or the National Security
8 Agency, or to any agreement which requires prepublication
9 review by either of those agencies.

10 (c) For purposes of this section, “prepublication review”
11 and “agency” each has the meaning given that term in sec-
12 tion 7361 of title 5, United States Code (as added by this
13 Act).

14 SEC. 4. This Act shall take effect on October 1, 1984.

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